

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

DOCKETING STATEMENT  
ON APPEAL FROM DISTRICT COURT

Caption of Case Fourth Circuit Docket No. (if known) 08-4410

*United States of America*

v.

*Steven J. Rosen; Keith Weissman*

Type of Action

- Civil  
 Criminal/Prisoner  
 Cross Appeal

District E.D. Virginia Judge T.S. Ellis III

District Court Docket Number 1:05cr225

Statute or other authority establishing jurisdiction in the:

District Court 18 U.S.C. s. 3231

Court of Appeals 18 U.S.C. App. 3 s.7 (CIPA s. 7), collateral order doctrine

A. Timeliness of Appeal

1. Date of entry of judgment or order appealed from 3/19/08
2. Date this notice of appeal filed 4/10/08  
If cross appeal, date first notice of appeal filed 3/27/08
3. Filing date of any post-judgment motion filed by any party which tolls time under FRAP 4(a)(4) or 4(b) \_\_\_\_\_
4. Date of entry of order deciding above post-judgment motion \_\_\_\_\_
5. Filing date of any motion to extend time under FRAP 4(a)(5), 4(a)(6) or 4(b) \_\_\_\_\_

Time extended to \_\_\_\_\_

B. Finality of Order or Judgment

1. Is the order or judgment appealed from a final decision on the merits?  
[ ] Yes [✓] No
2. If no,
  - a.) Did the district court order entry of judgment as to fewer than all claims or all parties pursuant to FRCP 54(b)? [ ] Yes [✓] No
  - b.) Is the order appealed from a collateral or interlocutory order reviewable under any exception to the finality rule? [✓] Yes [ ] No.  
If yes, explain below or on a separate page.

(Criminal only)

3. Has the defendant been convicted?     Yes     No  
4. Has a sentence been imposed?         Yes     No        Term [                    ]  
5. Is the defendant incarcerated?        Yes     No

- C. Has this case previously been appealed?  Yes     No  
If yes, give the case name, docket number and disposition of each prior appeal below or on a separate page.

Government appeal, case no. 08-4358, consolidated with this cross-appeal, case no. 08-4410.

- D. Based on your present knowledge:  
Will this appeal involve a question of first impression?     Yes     No

If yes, please explain below or on a separate page.

See Attachment A

- E. Are any related cases or cases raising related issues pending in this Court, any district court of this circuit, or the Supreme Court?     Yes     No  
If yes, cite the case and the manner in which it is related on a separate page. If abeyance, consolidation, or in seriatim argument is warranted, counsel must file a separate motion seeking such relief.

If a related case is pending in this Court, has it been accepted for mediation by the Office of the Circuit Mediator?                     Yes                     No

- F. State the nature of the suit, the relief sought, and the outcome below. Attach additional page if necessary.

The government's appeal, case no. 08-4358, seeks appeal of four decisions. Though Appellees will challenge the Court's jurisdiction with respect to three of those four decisions, if this Court finds jurisdiction, then the appellees seek to cross-appeal those decisions as well. For example, the government has noticed appeal of the district court's order denying defendants' motion to dismiss on constitutional grounds, presumably to challenge, not the outcome, but the district court's rationale. Should this Court review that rationale on appeal, the defendants will argue that the Constitution compels dismissal of the indictment or, at a minimum, a heavier burden of proof at trial than the district court has required.

- G. Issues to be raised on appeal. Attach additional page if necessary.

Whether the district court erred in holding that the instant prosecution does not violate the First Amendment and the Due Process Clause; whether the so-called "silent witness rule" is inconsistent with and barred by the Classified Information Procedures Act and/or the Sixth Amendment; whether the district court erred in excluding classified information at trial and/or approving various redactions, substitutions, and uses of the silent witness rule.



- M. If this case arises out of a bankruptcy proceeding, attach a copy of the caption of the case in the bankruptcy court showing the parties' status as debtor, creditor, trustee, plaintiff, defendant, etc.
- N. List name(s) and address(es) of appellant(s) who filed this notice of appeal and appellant's counsel. Attach additional page if necessary.

Appellant(s) name Keith Weissman

Address 5707 Harwick Road, Bethesda, MD 20816

Telephone (301) 329-9483

E-mail kweissman@verizon.net

Attorney's name Baruch Weiss, John Nassikas and Kate Briscoe

Firm Arent Fox LLP

Address 1050 Connecticut Ave., N.W.

Washington, DC 20036

Telephone \_\_\_\_\_

E-mail \_\_\_\_\_

Will you be handling the appeal? (In criminal cases counsel below will handle the appeal unless relieved by this court.)

Yes     No

FRAP 12(b) provides that each attorney who files a notice of appeal must file with the clerk of the court of appeals a statement naming each party represented on appeal by that attorney. Any counsel, other than the attorney filing this form, who filed a notice of appeal must provide the requisite statement to be attached to this form.

Signature \_\_\_\_\_

Date \_\_\_\_\_

7/25/08

ATTACH:    Any additional pages containing extended answers to questions on this form  
              Any transcript order with attachments  
              Certificate of service for this docketing statement

M. If this case arises out of a bankruptcy proceeding, attach a copy of the caption of the case in the bankruptcy court showing the parties' status as debtor, creditor, trustee, plaintiff, defendant, etc.

N. List name(s) and address(es) of appellant(s) who filed this notice of appeal and appellant's counsel. Attach additional page if necessary.

Appellant(s) name Steven Rosen  
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Will you be handling the appeal? (In criminal cases counsel below will handle the appeal unless relieved by this court.)

Yes     No

FRAP 12(b) provides that each attorney who files a notice of appeal must file with the clerk of the court of appeals a statement naming each party represented on appeal by that attorney. Any counsel, other than the attorney filing this form, who filed a notice of appeal must provide the requisite statement to be attached to this form.

Signature   
Date 4/25/08

ATTACH:    Any additional pages containing extended answers to questions on this form  
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## **ATTACHMENT A**

The government's appeal of the CIPA section 6(c) Order does not raise any issues of first impression but involves only application of clearly established Fourth Circuit law. The other three Orders noticed in the government's appeal, however, raise numerous novel legal issues, including whether the First Amendment and/or due process clause preclude the prosecution of private citizens for passing on information orally disclosed to them by government officials; whether CIPA permits the government to conceal trial evidence from the public through such techniques as the so-called "silent witness rule"; and whether such techniques violate the defendants' Sixth Amendment right to public trial. Although defendants believe this Court lacks jurisdiction to hear the government's appeal of those three Orders, the defendants seek to preserve their right to argue fully these issues if the Court finds jurisdiction.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 25th day of April, 2008, a true and accurate copy of the foregoing Docketing Statement On Appeal From District Court was sent by facsimile and first-class mail, postage prepaid upon:

U.S. Attorney Chuck Rosenberg  
Assistant U.S. Attorney Neil Hammerstrom  
Assistant U.S. Attorney James Trump  
United States Attorney's Office  
for the Eastern District of Virginia  
2100 Jamieson Avenue  
Alexandria, Virginia 22314

By: \_\_\_\_\_

  
John N. Nassikas III